IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6336 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STAE OF GUJARAT

Versus

BABUBHAI ISUFALI TRAVDI

Appearance:

1. Special Civil Application No. 6336 of 1994

Mr.N.D.Gohil, AGP for Petitioner No. 1

PARTY-IN-PERSON for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/10/2004

ORAL JUDGEMENT

Heard the learned AGP Mr. N.D. Gohil for the petitioner and Shri Babubhai Isufali Travadi

party-in-person for the respondent no.1.

1. In this petition, the petitioner has challenged the order dated 28th June, 1993 passed by the Education Tribunal, Ahmedabad, while disposing of application no.264/1993 filed by the respondent no.1 herein.

2. Briefly stated, the facts of the case are that the respondent no.1 who was working as Supervisor with effect from 1-8-1991 had filed the above mentioned application no.264/1993 before the Gujarat Secondary Education Tribunal claiming dearness allowance on the basic salary plus the supervisory allowance added to the basic pay of the respondent no.1. It was the case of the respondent no.1 that earlier the Government used to pay dearness allowance not only on the basic salary but also on the supervisory allowance at the prevalent rate. It was stated before the Tribunal by the respondent no.1 that all of a sudden the department stopped the practice of granting dearness allowance on the supervisory allowance and calculated the same only on the basic salary of the teachers. With the said grievance, the applicant (respondent no.1 herein) approached the Gujarat Secondary Education Tribunal and the Tribunal vide its judgment and order dated 28th June, 1993 was pleased to allow the application and to declare that the applicant was entitled to basic salary plus supervisory allowance and the department was directed to continue to pay D.A. on the basic pay and supervisory allowance. It is this order of the Tribunal dated 28th June, 1993 which is under challenge before this Court in the present petition.

3. The Tribunal, while coming to the above conclusion, noted that it is true that by G.R. dated 1-6-1987 it is prescribed that the dearness allowance on the revised payscales which came into force with effect from 1-1-1986 should be calculated only on the basic pay as defined in the Bombay Civil Services Rules, Rule 9(9)(a)(1). Despite the said G.R. dated 1-6-1987, the Tribunal found that the Education Department had by its circular dated 26-7-1983 clarified that the supervisory allowance should be considered as part of the basic pay. The Tribunal also noted that in the erstwhile Bombay State also there was circular which clarified that the supervisory allowance was a part of the basic pay. On the basis of this factual background, the Tribunal was of the opinion that the applicant therein i.e. the respondent no.1 herein was entitled to receive dearness allowance not only on the basic pay but also on the

supervisory allowance. Consequently, the above decision came to be rendered by giving directions as noted above.

4. Having heard the contesting parties, I find that the Tribunal erred in ignoring the circular of the Finance Department of the State of Gujarat dated 1-1-1987 wherein it is clearly provided that for the purpose of D.A., only basic pay is to be taken into account and supervisory allowance is to be ignored. In fact, the circular taking note of the provisions of the B.C.S.Rs. and in particular Rule 9(9)(a)(1) provided that for the purpose of calculating the D.A., the basic revised pay which was revised with effect from 1-1-1986 should form the basis, and obviously, therefore, other allowances such as supervisory allowance could not have been taken into account for calculating the dearness allowance. In my view, the Tribunal was in error in ignoring the clear directives of the Government as found in the circular of the Finance Department dated 1-6-1987 and seeking to fall back upon the earlier circular of the Education Department dated 26-7-1983. Obviously when the payscale of the teachers had been revised pursuant to pay revision with effect from 1-1-1986; it was open to the Government to take a stand as to how the supervisory allowance should be considered, and if the Finance Department has in its wisdom, by issuing appropriate circular ruled that the D.A. shall be calculated on the basic salary and the term basic salary should be considered as defined in the B.C.S.Rs., it was not open for the Tribunal to direct the respondents to include the supervisory allowance as part of the basic salary for the purpose of calculating dearness allowance.

5. In the result, I find that the Tribunal erred in allowing the application of the respondent no.1 herein, and as such, the judgment and order dated 28th June, 19983 passed by the Secondary Education Tribunal is required to be, and is hereby quashed and set aside. The petition is allowed. Rule is made absolute with no orders as to costs.

(Akil Kureshi,J.)

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